

Crestwood Hospitals, Inc. d/b/a Crestwood Convalescent Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL-CIO, Petitioner. Case 20-RC-17047

March 31, 1995

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held August 8, 1994, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 87 for and 46 against, the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings¹ and recommendations,² and finds that a certification of representative should be issued.

We adopt, *inter alia*, the hearing officer's recommendation to overrule the Employer's Objection 28, which alleges that the Petitioner violated the rule of *Milchem, Inc.*, 170 NLRB 362 (1968), because its agents or supporters engaged in electioneering outside the polling place. We stress that *Milchem* applies only to prolonged conversations between agents of a party to the election and employees who are waiting in line to cast their ballots. Although the Employer contends that employees Lorna Reyes and Marie Bernados were the Petitioner's agents during the organizing campaign,

the credited evidence on this issue merely shows that Reyes was a member of the Petitioner's organizing campaign and that, following the election, both Reyes and Bernados were elected to serve as interim shop stewards.³ It is well established that evidence of this nature is insufficient to support a finding that the employee advocate acted as the Union's general agent for organizing purposes. See *Advance Products Corp.*, 304 NLRB 436 (1991); and *United Builders Supply*, 287 NLRB 1364 (1988). Thus, we find that the Petitioner was not responsible for any misconduct by Reyes and Bernados during the balloting.

We further find that none of the evidence establishes that remarks by Reyes and Bernados to fellow voters while they were waiting in line meets the standard for finding that voting line conduct by employees who are not agents of parties is grounds for setting aside the election. Thus, even accepting as true the testimony of the Employer's election observer, Betty Bell, that Reyes and Bernados walked among about 25 employees and talked to them as they waited in line to vote, we do not find that their actions so substantially impaired the employees' free choice that the election must be set aside based on objectionable third party conduct. See *Southeastern Mills*, 227 NLRB 57 (1976). We note that the present case is clearly distinguishable from *Pepsi-Cola Bottling Co.*, 291 NLRB 578 (1988), where the Board found election interference because voters had to pass through a "gauntlet" of chanting and cheering prounion supporters en route to the polling place. Accordingly, we find no merit to the Employer's exceptions to the hearing officer's disposition of this objection.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Health Care Workers Union, Local 250, Service Employees International Union, AFL-CIO and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service and maintenance employees, including certified nursing assistants, nursing aides, dietary aides, cooks, housekeeping employees, janitors, laundry em-

¹The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

The hearing officer stated in his discussion of the Employer's Objection 1 that employee Sabida Prasad testified that prounion employees called out to her, "remember me," as she walked in front of the Employer's facility during the morning voting session. As the Employer notes in its brief, the record shows that Prasad actually stated that the employees called out, "remember us." We do not find that correction of this minor error is sufficient to affect the hearing officer's ultimate disposition of the Employer's Objection 1.

²In adopting the hearing officer's finding that the Petitioner did not make objectionable appeals to racial prejudice as alleged in the Employer's Objection 32, we find that the hearing officer correctly applied the standard of *Sewell Mfg. Co.*, 138 NLRB 66 (1962), in overruling this objection. The portions of the Petitioner's campaign literature on which the Employer relies in no way amounted to an appeal to racial or ethnic prejudice, but rather urged the solidarity of all employees in support of the Petitioner's campaign and against any actions by the Employer that might incite racial and ethnic divisions. See *State Bank of India v. NLRB*, 808 F.2d 526, 541-542 (7th Cir. 1986), and cases cited there.

³We note that the Employer, in arguing that Reyes and Bernados were union agents, also relies on employee Lynete De Fiesta-Saguid's testimony that she had heard rumors from various employees that several union adherents were receiving money from the Petitioner. The hearing officer, however, discussed this testimony while recommending that the Employer's Objections 24 and 25 be overruled and properly found that it "is ambiguous and no more than hearsay." Because we agree with the hearing officer's further finding that De Fiesta-Saguid's testimony fails to establish that the Petitioner actually paid any money to supporters like Reyes and Bernados, we conclude that this hearsay evidence does not constitute any basis for finding that these employees were union agents.

employees, dishwashers, and activities assistants employed by the Employer at its Vallejo, California, facility; excluding office clerical employees, reg-

istered nurses, licensed vocational nurses, guards, and supervisors as defined by the Act.